

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REMAINDER ASSESSMENT	DOCKET NO. IOWA CODE § 476.10
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ORDER DENYING OBJECTION

(Issued December 18, 2002)

On September 13, 2002, the Utilities Board (Board) issued the estimated remainder assessment billings for the first quarter of fiscal year (FY) 2003, pursuant to Iowa Code § 476.10 (2001 Supp.). The Board received an informal protest from MidAmerican Energy Company (MidAmerican) concerning the inclusion of revenues from wholesale sales of electricity and gas in the calculation of "gross operating revenues of such persons from intrastate operations during the last calendar year over which the board has jurisdiction." Iowa Code § 476.10. Gross operating revenues provide the basis for the Board's remainder assessment.

Historically, electricity and gas wholesale sales have been included in gross operating revenues when calculating the remainder assessment. However, in 2001 Iowa Acts, Ch. 9, the formulation of gross operating revenues was changed to the language quoted above. Prior to that change, assessments were made in proportion to public utilities' "gross operating revenues during the last calendar year derived from intrastate public utility operations . . ." Most notably, the earlier language did not include the phrase "over which the board has jurisdiction."

MidAmerican argued this change requires wholesale sales of natural gas and electricity to no longer be included in the calculation of the remainder assessment.

COMMENTS

On October 9, 2002, the Board issued an "Order Tolling Objection Period and Seeking Comment" on the question raised by MidAmerican. The following is a summary of the most significant comments received:

MidAmerican

The assessment should be based only upon revenues from services over which the Board has jurisdiction. The Federal Energy Regulatory Commission (FERC) has jurisdiction over sales of gas or electricity for resale. Section 201(b), Federal Power Act. These are sales in interstate commerce and wholesale revenues are not derived from "intrastate operations."

The purpose of the 2001 amendment was to allocate costs more closely to the cost causers. It is inconsistent with this purpose to assess non-jurisdictional revenues. The amendment changed prior law by adding a specific reference to jurisdictional sales. Billings for FY 2002 3rd and 4th Quarters and FY 2003 1st Quarter did not reflect the change in law because they were not based exclusively on retail revenue.

The statute arguably is permissive, because it states the Board "may assess the amount remaining . . ." However the principles of billing the cost causers and of giving meaning to all parts of the statute indicate the Board should follow the formulation in the statute and assess only jurisdictional sales.

Consumer Advocate Division of the Department of Justice (Consumer Advocate)

MidAmerican's protest should be denied. In MidAmerican's last rate case, Docket Nos. RPU-01-3/5, the proper treatment of wholesale revenues was litigated in the prepared testimony. Neither Consumer Advocate nor MidAmerican argued that wholesale revenues were not within the Board's jurisdiction. The sharing mechanism in the settlement in that case reflects all wholesale revenues in determination of the customers' share of MidAmerican's earnings.

Wholesale revenues are reflected in the calculation under the energy adjustment clause (EAC) rules. 199 IAC 20.9. Also, wholesale sales of electricity and gas are required to be included in the annual reports to the Board.

Interstate Power and Light Company (IPL)

IPL believes the change in § 476.10 may require a change in the calculation, but there is no clear line where the Board's jurisdiction begins and ends. The jurisdictional questions occur because FERC sets wholesale rates; the Board determines how wholesale costs are recovered from customers; and rate based assets may be used to generate electricity for wholesale sales. If the Board adopts MidAmerican's interpretation, it should set guidelines to determine the jurisdictional boundary.

Iowa Association of Electric Cooperatives (IAEC)

To the extent the Board disclaims jurisdiction over wholesale sales, the statute requires the receipts to be excluded. Exclusion of all wholesale sales would make the express statutory exclusion of wholesale sales by generation and transmission coops to their member coops who are subject to assessment unnecessary.

The statute expressly provides for remainder assessment of non-rate regulated utilities, but the Board lacks jurisdiction over the gross operating revenues of these utilities. The IAEC does not believe the legislature intended exclusion of all revenues of non-rate regulated utilities.

Iowa Association of Municipal Utilities (IAMU)

IAMU agrees with the IAEC that to the extent the Board disclaims jurisdiction over wholesale sales, the statute requires sales to be excluded from the remainder assessment.

Supplemental responses were filed as follows:

Consumer Advocate

The section 476.10 formulation is based on revenues, not rates. Wholesale revenues are part of intrastate operations because the Board determines how those revenues are recognized in intrastate rates. Iowa retail customers pay a return on and a return of MidAmerican's investment in generation and all reasonable operation and maintenance expenses associated with the units. The same is true for wholesale gas revenues. Even IPL recognized these facts in its comments.

MidAmerican

Consumer Advocate ignores limitations on revenues to be considered in the remainder assessment—that they be from jurisdictional services and derived from intrastate operations. Only FERC has the authority to permit local distribution utilities to create wholesale revenues. The Board can only allocate the revenues. It does not conduct ratemaking, maintain tariff books, mediate complaints, or do other things FERC does in regard to wholesale rates.

ANALYSIS

As indicated by IPL and acknowledged by the IAEC and IAMU, there is no clear jurisdictional line to show whether wholesale revenues should be included in the remainder assessment. Wholesale rates are within the jurisdiction of FERC, not the Board. On the other hand, the Board clearly exercises jurisdiction over wholesale revenues and the assets that produce them in rate cases and through the EAC.

After reviewing the comments, the Board concludes it is appropriate to continue to include wholesale revenues in the remainder assessment for two reasons. First, the relevant permissive sentence in section 476.10 allows the Board to assess revenues from intrastate operations over which it has jurisdiction. As even MidAmerican's supplemental comments acknowledge, the Board has jurisdiction to allocate wholesale revenues in setting retail rates. Also, the assets that produce the revenues clearly are within the Board's jurisdiction, in retail ratemaking, siting, permits, and franchises. The combination of FERC's jurisdiction over wholesale rates and the Board's jurisdiction over wholesale revenues and the assets that

produce them makes the jurisdiction of both agencies concurrent rather than exclusive. Concurrent jurisdiction is sufficient to satisfy the statute.

Second, the exercise of the Board's jurisdiction over wholesale revenues in retail ratemaking makes wholesale sales a regulatory cost causer for the Board and Consumer Advocate. The cost causer principle cited by MidAmerican in this instance actually supports inclusion, not exclusion, of wholesale revenues.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The informal objection by MidAmerican Energy Company to the inclusion of revenues from wholesale natural gas and electricity sales is denied. Board staff shall continue to include these revenues in calculating the remainder assessment amounts to be billed.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of December, 2002.